IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1354 OF 2004

Shivkant alias Bhaiya
Kailashnath Vajpay ...Petitioner

Versus

The Dy.Commissioner of Police
& Ors. ...Respondents

.....

Mr.Sudatta Patil for Petitioner.

Mr.D.R.More, A.P.P. for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

OCTOBER 8, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.More, A.P.P. waives notice for Respondents.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. The Deputy Commissioner of Police, Zone IV, Ulhasnagar, District Thane, in exercise of powers under Section 56 of the Bombay Police Act, externed the Petitioner by order dated 23rd February 2004, directing that he would remove himself outside the limits of Thane District, Greater Mumbai, Mumbai Suburban and Raigad District for a period of two years from the date of the order. That order was challenged by way of statutory appeal before the Chief Secretary (A & Su.). The Appeal has been dismissed by decision dated May 17, 2004.

5. According to the Petitioner, the Appellate Authority has committed manifest error in reckoning matters which were neither part of the show cause notice nor the original externment order passed by the Externing Authority. This has vitiated the order passed by the Appellate Authority. To support this submission, my attention was invited to the show-cause notice and the order passed by the Externing Authority. It is seen that the

instances referred to in Para 7 of the order of the Appellate Authority, are nowhere referred to in the show-cause notice or for that matter, the original externment order passed against the Petitioner. Learned A.P.P. appearing for the Respondents fairly accepts this position.

6. If it is so, without going into any other contention raised before this Court in the present Writ Petition, the impugned decision of the Chief Secretary (A & Su.) dated May 17, 2004 dismissing the appeal preferred by the Petitioner, deserves to be set-aside and instead, the Petitioner ought to be relegated before the Appellate Authority, who in turn, shall decide the appeal afresh, on its own merits, in accordance with law, uninfluenced by any observations made in the impugned order. All questions are left open to be decided by the Appellate Authority.

7. The Appeal shall be decided within four weeks from the receipt of writ of this Court.

8. The Petitioner shall appear before the

Appellate Authority on 18th October 2004 at 2.30 p.m. On that date, the Appellate Authority may either proceed to decide the appeal or give some other date for hearing, subject, however, that the appeal is disposed of within four weeks as aforesaid.

9. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.